BBi Group News

BBi Group : Supporting your Business

Group News - September 2017

NEWS FROM THE HR TEAM

# Penalty for hiring Illegal workers

## Currently employers who knowingly (or had reasonable cause to believe) hired illegal workers may be imprisoned for up to 5 years.

In November 2016, the government carried out consultations on excluding employers who hire illegal workers from claiming Employment Allowance. The Employment Allowance was introduced in April 2014 and allows businesses to claim a reduction of up to £3,000 a year on their employers' NICs.

Under new plans introduced by the government, with effect from April 2018, employers will not be able to claim Employment Allowance for a period of one year if they have:

- hired an illegal worker
- been penalised by the Home Office
- exhausted all appeal rights against that penalty

# Pensions Auto-Enrolments

Under auto enrolments, the minimum pension contributions are required to increase over time. This is scheduled to increase on set dates with the first increase of a minimum 2% of total contributions set to happen from April 2018.




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## Remote Working

Flexible working has become increasingly popular in recent years and as more and more employees work from home, employers must bear in mind their responsibilities in these situations. Homeworking allows employees to have a better work life balance and for employers to have a more loyal and motivated work force, better productivity and reduced overheads.

While the benefits are certainly numerous, employers must also consider implications of such working arrangements including line management, costs of setting up homeworking, changes to employment contracts and health and safety. Employers would be responsible for health and safety, carry out risk assessments and ensure employees have all the right equipment to enable them to work remotely. Any arrangements must be confirmed in writing and a regular review of the arrangement should be carried out.

An effective way of managing staff would be to set clear core hours of working, and setting up regular meetings either in the office or offsite so that the employee does not feel cut off from the office. Further employers must ensure that employment handbook and policies are easily accessible to staff and include homeworkers in work related aspects such as promotions, trainings, office events. Lastly to ensure clarity, having a homeworking policy that confirms arrangements and expectations would be useful.

# R(UNISON) v Lord Chancellor 2015

### After 3 ½ years Unison the UK's largest Union won the case to abolish Tribunal Fees which would give Employees the ability to bring a tribunal claim regardless of the financial situation

This case was appealed by Unison after the Court of Appeal dismissed Unison's challenge to the tribunal fees system and whether such a system was indirectly discriminatory. Unison further claimed that this system breached the EU principles of effectiveness. The Supreme Court heard the case in March 2017 on whether the fees order breached the EU principles of effectiveness and whether the system was indirectly discriminatory.

Unison challenged the fee system on the grounds that the fees were set at such a level and the remission criteria was so restricted that many claimants would be unable to afford to bring a claim in the tribunals. This challenge was also supported by the Equality and Human Rights Commission.

The case was dismissed by the High Court and the Court of Appeal who recognised that there was a substantial decline in potential claimants (which was one of the points raised by Unison).

However, the Court of Appeal stated that the decline did not, by itself, evidence or constitute a breach of the effectiveness principle; it was inevitable that potential claimants would be more willing to embark on litigation when it was free than when payment had to be made up front with no certainty regarding its recovery.

So, now, Britain's highest court has ruled that the fees go against the EU and UK Law.
They have said that up to £32 million will be refunded to thousands of people dating back to July 2013 when the fees were initially introduced.

Cases had fallen by 70% further to the fees being introduced and Unison won the "landmark" victory arguing that the fees discriminated against workers as many had found the £1200 un-affordable hence preventing access to Justice.

## Leave Rights for Grandparents

At the moment, the only way for grandparents to participate in caring for their grandchildren is through Flexible Working. Under the proposed arrangements, mothers may be able to share their parental leave with grandparents in the same way as they would with the father of the child.

Back in March 2016, the government confirmed its plans to extend shared parental leave and pay to grandparents who are in employment. While this is expected to be in place by 2018, to date, no consultations have been issued on this subject.

# Donelien v Liberata UK Limited

This case highlights the importance employers taking all reasonable steps to establish whether or not an employee is disabled for the purposes of Equality Act. Under the act, an employee will be disabled if they have a physical or mental impairment which has a substantial adverse effect on their normal day-to-day activities, which lasts or may last for more than 12 months.

Further for an employer to be able to make reasonable adjustments, they must have constructive knowledge of an individual's disability.

Ms. Donelien was employed for nearly 11 years before being dismissed for the following misconduct issues; a high number of short term absences, failure to comply with the employer's sickness absence process and failure to work her contractual hours. Further the Claimant had been uncooperative throughout. Ms. Donelien argued that her employer had failed to make reasonable adjustments.

The employer held the view that Ms Donelien attended work as and when she felt able to as she believed she was able to manage her own stress. Within reason the employer held return to work meetings with the Claimant, engaged in discussions with her about her absences and reviewed the correspondence from her GP. The employer relied on the occupational health report which was flawed and concluded that the employee was not disabled.

As a consequence, the employer made no adjustments, even though discrepancies in the report warranted further investigation.

The EAT took into account these wider investigations and held that in spite of the apparent flaws, when viewed as a whole, the employer had taken sufficient steps to avoid having constructive knowledge of the employee's disability.

The case highlights, yet again, the importance of a clear process and being reasonable when dealing with employee absences.

# Chesterton Global Ltd (t/a Chesterton Humberts) and another v Nurmohamed (2016)

This case concerns with aspects of victimisation and protected disclosures and specifically addressed the meaning of "in the public interest" in section 43B (1) of the ERA 1996. The Tribunal held that the Respondent, Mr. Nurmohamed, who was a Director of Chesterton Global Ltd (Claimants), was unfairly dismissed and that he was subjected to detriments on the grounds that he made protected disclosures. The Employment Tribunal concluded that the disclosures were made in the reasonable belief of the Respondent that they were in the interest of 100 senior managers, and that that is a sufficient group of the public to amount to be a matter in the public interest.

The ET outcome was appealed on the basis that the Tribunal erred on concluding that disclosures made in the interest of the 100 senior managers was to a sufficient group of the public to amount to being a matter in the public interest; and second that it was for the Tribunal to determine objectively whether or not the disclosures were of real public interest, and this the Tribunal failed to do.

The EAT rejected the appeal as it held that the disclosure itself was made on the belief that the disclosure was made in the public interest.

The Appellants further appealed the outcome and in July 2017, the Court of Appeal upheld the Employment Tribunal's decision. The Court of Appeal held that the disclosures related to a breach of the employment contracts of 100 senior managers, including the whistleblower. The Respondent's disclosures indeed met with the 'public interest' requirement as specified under Whistleblowing provisions of the ERA 1996.